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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-00395-TOR

MOTION TO STRIKE PLAINTIFF'S
RESPONSE TO DEFENDANT'S
MOTION TO COMPEL

Without Oral Argument

DATE: July 31, 2014 at 6:30 p.m.

Defendant Ryan Lamberson Moves this Court to Strike Plaintiff's
Opposition to Defendant's Motion to Compel, ECF No. 62, and its associated
Declarations of David Lowe, ECF No. 62-1, Maureen VanderMay, ECF No. 62-2,
and Meagan Sweeten, ECF No. 62-3. This Motion is brought pursuant to Fed. R.
Civ. P. 12(f); LR 7.1(b)(2)(B)(1) and LR 7.1(d). The Court has discretion under

1 Fed. R. Civ. P. 12(f) to strike a pleading as well as portions thereof. *Federal*
2 *Savings and Loan v. Gemini Management*, 921 F.2d 241, 243 (9th Cir. 1990).

3 The basis for this Motion to Strike is that plaintiff's Opposition and its
4 supporting Declarations were not timely filed, as required by this Court's Local
5 Rules. Local Rule 7.1 of the Eastern District of Washington establishes the
6 procedure for the filing and timing of filing of memoranda regarding Motions.
7 Local Rule 7.1(b) requires that a Responsive Memorandum "shall be filed" "within
8 14 days after the filing of a nondispositive motion" and "the time periods set forth
9 in this section include the additional 3-day period allowed under Fed. R. Civ. P.
10 6(d) and Fed. R. Crim. P. 45(c) and, therefore, apply regardless of the method of
11 service." Local Rule 7.1(d) includes the associated penalty for violation of the
12 motion rules: "The failure to comply with the requirements of LR 7.1(a) or (b) may
13 be deemed consent to the entry of an Order adverse to the party who violates the
14 rules."

15 Mr. Lamberson's Motion to Compel Discovery, ECF No. 57, was filed on
16 Friday, June 13, 2014. Fourteen days after Friday, June 13, 2014, would be Friday
17 June 27, 2014. Plaintiff's responsive memorandum, ECF No. 62, was filed on
18 Monday, June 30, 2014, seventeen days after the date of filing of the Motion to
19 Compel. This is not timely under the Local Rules. Plaintiff's late filing prejudices
20 Mr. Lamberson who must now prepare a Reply Memorandum and associated
21 Declaration to counter the misleading Opposition filed by plaintiff in violation of
22 the rules. "[T]he function of a Rule 12(f) motion to strike is to avoid the
23

1 expenditure of time and money that must arise from litigating spurious issues....”

2 *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983).

3 Plaintiff did not file any Motion for Extension of Time prior to or
4 simultaneously with its responsive memorandum. The Court has not granted any
5 such extension or waiver from the requirements of LR 7.1(b). No explanation for
6 the lateness of the responsive memorandum has been provided. In fact, plaintiff’s
7 responsive memorandum and its supporting declarations were filed on June 30,
8 2014, only after (i) defendant had requested a meeting of counsel under LR 37.1(b)
9 in which plaintiff did not participate, and (ii) defendant had submitted the Joint
10 Statement, ECF No. 61, required by that rule which identifies plaintiff’s failure to
11 participate in such a meeting. Plaintiff’s counsel does not appear to have been
12 otherwise detained without access to the Court on the due date of Friday, June 27,
13 2014, since the plaintiff and its counsel did file Motions for Default Judgment
14 asking for attorneys’ fees on that same date (Case No. 2:13-cv-00126-TOR, ECF
15 No.108 and Case No.2:13-cv-00115-TOR, ECF No. 112).

16 Mr. Lamberson respectfully requests that this Court issue an Order striking
17 Plaintiff’s Opposition to Defendant’s Motion to Compel and its associated
18 Declarations. Pursuant to LR 7.1(d), Mr. Lamberson respectfully requests an Order
19 granting his Motion to Compel. Pursuant to LR 37.1(d) and Fed. R. Civ. P.
20 37(a)(5), Mr. Lamberson respectfully requests an award of costs, attorneys’ fees
21 and sanctions including dismissal of plaintiff’s case for plaintiff’s inappropriate
22 practices.

1 DATED this 1st day of July, 2014.

2 LEE & HAYES, PLLC

3
4 By: s/ J. Christopher Lynch

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10 *Counsel for Defendant Ryan Lamberson*

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

David A. Lowe lowe@lowegrahamjones.com

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